

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
FILED

United States Court of Appeals  
for the Fifth Circuit

MAY 14 2021

NATHAN OCHSNER  
CLERK OF COURT

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No. 20-20561

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United States Court of Appeals  
Fifth Circuit

**FILED**

April 5, 2021

Lyle W. Cayce  
Clerk

BRADLEY GARRETT,

*Petitioner—Appellant,*

*versus*

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

*Respondent—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:17-CV-3363

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Before HIGGINBOTHAM, SMITH, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

In this habeas corpus case filed by a state prisoner, the final judgment was entered and certificate of appealability was denied on November 29,

2018. Therefore, the final day for filing a timely notice of appeal was Monday, December 31, 2018 because the thirtieth day was a Saturday. See FED. R. APP. P. 26(a)(1)(C). The petitioner's pro se notice of appeal is dated October 18, 2020 and stamped as filed on October 26, 2020. Because the notice of appeal is dated October 18, 2020, it could not have been deposited in the prison's mail system within the prescribed time. See FED. R. APP. P. 4(c)(1) (prisoner's pro se notice of appeal is timely filed if deposited in the institution's internal mail system on or before the last day for filing). When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 17 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988). Accordingly, the appeal is DISMISSED for want of jurisdiction.



A True Copy  
Certified order issued May 14, 2021

*Lyfe W. Cayce*  
Clerk, U.S. Court of Appeals, Fifth Circuit

***United States Court of Appeals***

FIFTH CIRCUIT  
OFFICE OF THE CLERK

LYLE W. CAYCE  
CLERK

TEL. 504-310-7700  
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Suite 115  
NEW ORLEANS, LA 70130

May 14, 2021

Mr. Nathan Ochsner  
Southern District of Texas, Houston  
United States District Court  
515 Rusk Street  
Room 5300  
Houston, TX 77002

No. 20-20561     Garrett v. Lumpkin  
USDC No. 4:17-CV-3363

Dear Mr. Ochsner,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk

*Christina Rachal*

By: \_\_\_\_\_  
Christina C. Rachal, Deputy Clerk  
504-310-7651